BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION
AT NASHVILLE

IN THE MATTER OF : [redacted]	)	COPY
PETITIONER,	)	
VS.	)	NO. 98-38
ANDERSON COUNTY SCHOOL SYSTEM,	)	
RESPONDENT.	)	

MEMORANDUM OPINION AND ORDER

THIS CAUSE came to be heard on March 9 and 10, 1999 before Administrative Law Judge Kimberly K. Whaley. The parents of the child, [redacted] requested a Due Process Hearing on or about August 24, 1998. They alleged that the Anderson County School System (hereinafter "System"), failed to propose an appropriate educational program for their son for the 1998-1999 year. Shortly thereafter, the System also filed a request for a Due Process Hearing in order to allow additional psychiatric and psychological testing of the child. A Preliminary Order was entered by this Court and the additional psychiatric and psychological tests were allowed. The testing was completed in October and November 1998 and this date selected for this hearing.

The parents have raised various issues including the appropriateness of their son's proposed educational program. In addition, they have asserted various violations of federal law and have specifically asserted that when a change of placement is made without parental

involvement, there is a violation of the law. The parents also question what is the least restrictive environment for their child in order for him to achieve educational successes.

The System submits that they have provided the child with a free, appropriate public education and that the parents had all procedural notifications and have participated in the development of their son's individualized educational programs (IEPs).

STATEMENT OF FACTS

[redacted] is a fifteen (15) year old student who lives with his parents, [redacted] and [redacted], in Clinton, Tennessee. Collective Exhibit I filed in this cause has numerous documents which correctly relate the history of this child. [redacted] was first referred for a special education evaluation in September 1991 due to behavioral problems in the classroom. See Exhibit 1, JC-000010-JC-000014. At the time the child was in the third grade before a comprehensive evaluation was conducted, there were numerous pre-referral interventions within the regular classroom which included behavior management techniques, principal consultations, special education courses, counseling, interaction with the parents, etc. See Exhibit 1, JC-000010). Thereafter, there was an evaluation performed to determine if the child was eligible to receive special education pursuant to the Individuals with Disabilities Education Act (IDEA). The parents consented to this evaluation and the same was performed by Janice Cole, a school psychologist, on or about January 27, 1992. At that time, the child was classified as intellectually gifted and seriously emotionally disturbed (SED). See Exhibit 1, JC-000014-JC-000018.

An M-team meeting was held on or about February 11, 1992. At that time, the child's pediatrician, Dr. Zimmerman, indicated the child was diagnosed as having Attention Deficit Disorder (hereinafter "ADD") and prescribed Ritalin. See Exhibit 1, JC-000019-JC-000023.

The parents were in agreement with the IEP which placed the child in special education and counseling at that time. See Exhibit 1, JC-000021-JC-000026.

On May 5, 1992, the IEP was developed and the M-team recommended four (4) hours per week of gifted enrichment services and counseling of up to thirty (30) minutes. The parents again consented to this and the child appeared to perform at or above grade level in all subject areas. See Exhibit 1, JC-000036-JC-000050.

In the fall of 1994, the child was placed in the sixth grade at Clinton Middle School. An M-team meeting was held on or about September 19, 1994. However, this was postponed to allow additional testing and re-evaluation. At that time, the school psychologist, Ms. Gail King, evaluated the child and concluded the child no longer met the criteria for intellectually gifted. The school psychologist felt at that time that the behaviors displayed by the child were more closely related to his ADD. See Exhibit 1, JC-000059-JC-000068. At this time, the child was declassified as a special education student, but was provided services pursuant to Section 504 because of his ADHD. An IEP was prepared which included various combinations for the child and included and recommended that vision testing would be completed. See Exhibit 1, JC-000073. This plan was updated in September 1995 for the child's entry into his seventh grade year.

At that time, he was placed at the Center for Achievement which is an alternative learning environment. Apparently, there were some behavior problems with the child and the child was perceived as being a threat to the safety of the other students. This plan recommended written progress and assignment reports that would be sent home daily to the parents from the teachers and twice weekly teacher contact with the child's mother via telephone. In addition, they had a

second set of textbooks for the mother to utilize. The parents were in agreement with this and the child was placed at the Center for Achievement. See Exhibit 1, JC-000087-JC-000100. Later however, the parents apparently had some issues with the Center for Achievement and a Due Process Hearing was requested on or about October 4, 1995.

The issues to be addressed at that hearing were apparently settled and the child was placed at Clinton Middle School in a regular education classroom in approximately December 1995. See Exhibit 1, JC-000151-JC-000153. Unfortunately, the child continued to have a lot of discipline problems and did not achieve academically as he had in the past. Based upon this, the school recommended that there be another comprehensive special education evaluation. On or about May 1, 1996, [redacted] again gave her written consent for this testing. See Exhibit 1, JC-000160-JC-000171. On or about August 22, 1996, the child was found not to meet federal or state eligibility criteria to receive special education services and related services. Yet, the System made the decision to continue to serve the child under Section 504. He was provided various accommodations at the time. See Exhibit 1, JC-000192-JC-000200.

At this point in time, an independent psychiatrist was retained by the parents. Dr. John Robertson performed testing on the child and ascertained that he had bi-polar disorder, NOS, ADHD combined type, conduct disorder, and enuresis. Behavior modification was recommended as well as a small, well-structured classroom setting. See Exhibit 1, JC-000211-JC-000215.

Subsequently, the parents again requested a private psychologist to assist with the evaluation of their child. Dr. Harvey Kaufman evaluated the child at the parents' request in June 1997. Dr. Kaufman diagnosed the child as having learning disabilities en masse (in written

expression). He also ascertained that the child had ADHD. His recommendation at that time was placement in a regular classroom with resource services as needed. See Exhibit 1, JC-000234-JC-000242.

The school psychologist again evaluated the child in September 1997 at the beginning of the school year and based on the diagnosis of the child's psychiatrist, Dr. Robertson, felt that he met the criteria for certification as emotionally disturbed (hereinafter "ED"). There was not an evaluation as to whether or not the child met the criteria for learning disabled as the child was not wearing his glasses. 20 U.S.C. §1402 (26)(c) provides that vision problems must be ruled out before making the assessment that a child has learning disabilities. See Exhibit 1, JC-000266-JC-000269. At this time and upon the recommendation of Dr. Kaufman, who was retained by the parents, the child was placed in a regular education program with resource services at Anderson County High School.

There were numerous problems that followed with the child's performance academically and behaviorally. An M-team meeting was held on or about August 26, 1997 to discuss the child's behavior problems, failing grades and medical issues. At that time, Dr. Kaufman recommended there be daily communication between the child's teachers and parents and the use of a homework tracker. See Exhibit 1, JC-000256. Dr. Kaufman also recommended that the child be allowed to speak with two (2) teachers as necessary during the day and recommended continuing counseling with him at the school expense be put in place. The System acquiesced and this service was provided.

Again, problems with the child's behavior continued. The child was also having grade problems. Another M-team was convened on or about September 23, 1997. At this time, a

vision assessment and a functional behavioral assessment were recommended. The parents gave consent for an assessment by Dr. Toll Coulter to perform the assessment. Dr. Coulter evaluated the child and recommended that the child have an abbreviated school day and began trying to regulate the child's medications. See Exhibit 1, JC-000272-JC-000276; JC-000295-JC-000296. It was further recommended at that time that the homework tracker would be monitored by the teachers and information reported to the parents. The child would be going to a resource classroom taught by a teacher named Ginny Micelli at the beginning and the end of the school day for organizational purposes and for monitoring of homework.

Dr. Robertson tried to adjust the child's medications in an effort to prevent the child's daytime sleepiness. Dr. Robertson also recommended an interim program for the child while he was adjusting this medication. The M-team recommended an abbreviated school day with individualized tutoring for two (2) hours per day. A teacher by the name of Ms. Pat Yocum was to individually tutor the child. She did so from October 14, 1997 through January 1998. Ms. Micelli maintained a behavior log for the child during his entire freshman year at Anderson County High School. There were numerous infractions which included failure to follow directions, foul language, fighting, tobacco violations, failure to complete homework, etc. See Exhibit 1, JC-000289-JC-000293. Dr. Kaufman recommended that the child complete homework assignments and if he failed to do so, there had to be a consequence for each action.

Again, there was poor progress and behavior problems. Another M-team meeting was held on or about December 5, 1997 to revise the child's IEP and to address a behavior plan. Dr. Kaufman again participated in this and made various recommendations to address the child's behavior. The M-team incorporated each of Dr. Kaufman's recommendations into the IEP. This

IEP included a shortened school day. Also, the teachers agreed to meet with Dr. Robertson and maintain regular communication with Dr. Kaufman. His eligibility designation at that time was "ED." The parents agreed to this at the time. See Exhibit 1, JC-000308-JC-000309. The mother later objected to the classification of "ED." However, the System persisted and the parents elected not to pursue Due Process at that time.

Again, there were problems with behavior and progress. Another M-team was convened on or about March 2, 1998. Again, a behavior plan was put into place as well as a transition plan. The primary problem was the child's behavior. There had been instances of infractions, tobacco violations, etc. which led to the child being placed in in-school suspension (ISS). These recommendations were implemented. See Exhibit 1, JC-000329-000347.

On April 24, 1998, there was a manifestation determination regarding the tobacco violation. Again, changes were made to the IEP. This time Dr. Kaufman recommended that the child be constantly supervised by an adult during the day. The child was to be met at the school door by an aide who would accompany him to attend classes, lunch, the restroom, etc. Moreover, a point system was developed to allow the child to earn privileges. Both parents agreed with this assessment at the time.

The behavior log that was maintained by teacher Ginny Micelli indicated the child's behavior did not improve despite these modifications. See Exhibit 1, JC-000289-JC-000293. There continued to be problems in the IEP. The team had to meet again on or about June 2, 1998. At this time, the team recommended placement in a regular educational classroom at Anderson County High School. The child was to receive ten and a half (10½) hours per week of special education assistance and one (1) hour per week counseling with Dr. Kaufman. See

Exhibit 1, JC-000350-JC-000361. The IEP also included a behavior modification plan which had been prepared by Dr. Kaufman. [redacted] ultimately signed in agreement with this IEP. See Exhibit 1, JC-000360.

Unfortunately, on or about June 6, 1998, Dr. Bob McCracken, the principal at Anderson County High School, sent a letter to the parents of the child notifying them that the child would not be permitted to re-enroll at Anderson County High School for the 1998-1999 year due to the discipline problems and for failure to meet the conditions for out-of-zone transfer pursuant to the school board policies. According to Dr. McCracken, permission to transfer is within the sole discretion of the building level principal pursuant to school board policy. See Transcript of Proceedings (hereinafter "T.P."), Vol. II, pp. 228-229. Dr. McCracken's letter is contained in Exhibit 1, JC- 000363-JC-000364. The parents were in disagreement with this decision and wrote a letter requesting an IEP meeting to address the same. See Exhibit 1, JC-000368.

There was another M-team meeting on or about July 24, 1998. However, there was some breakdown in communications and the M-team meeting was terminated. The M-team reconvened on or about August 17, 1998 to review this issue. At this time, the System agreed to check into their other schools which could possibly provide educational services for the child. Many systems were contacted which included Knox County, Oak Ridge City, Campbell County and Roane County. Only one county, Campbell County, agreed to serve the child. This was not acceptable to the parents. At that time, the System also asked for a psychiatric evaluation by Dr. Michael Greer to determine whether or not the parents' request that the child's "ED" label be removed. The parents refused to consent to the evaluation.

The parents requested a Due Process Hearing on or about August 24, 1998. Two (2) days earlier, the System had requested a Due Process Hearing seeking permission to evaluate. This Court determined that the independent testing would be allowed and an Order was so entered. The testing was completed during October and November 1998.

On August 26, 1998, another M-team meeting was held to develop an interim IEP while the Due Process proceedings were ongoing. See Exhibit 1, JC-000412-JC-000421. It was agreed that the child would receive individualized tutoring at the Central Office of the school system five (5) days per week throughout the course of this litigation.

On or about December 17, 1998, another M-team meeting was convened to consider the reports of the persons who performed additional testing, This included Dr. Michael Greer, Dr. Vance Sherwood and Dr. Steve McCallum. This time the IEP team recommended that the child's designation of "ED" be removed and that the child be placed at a facility called The Learn Center. The goal was to transition the child back to the regular high school setting. See Exhibit 1, JC-000453-JC-000460. The parents were not in agreement with this assessment at the time.

Numerous witnesses were presented at this hearing on behalf of either side in an attempt to narrow the issues and define whether or not a free, appropriate public education has been provided to the child.

ISSUES

1. Whether a free, appropriate public education in the least restrictive environment has been provided by the school system.

2. Whether the proposed IEP meets the substantive requirements of the IDEA.

3. Whether the child's transfer from Anderson County High School to Clinton High School is a "change in placement" pursuant to the IDEA.

4. Whether a violation of federal law occurred when a "change in placement" is made without parental involvement; and

5. Whether the school district's proposed IEP fulfills the least restrictive environment requirements pursuant to state law and the IDEA.

FINDINGS

Both federal and state law both require school systems to provide a free, appropriate public education (FAPE) to the child in question and all children. The law mandates that an individualized educational program (IEP) must be designed that is "reasonably calculated to confer educational benefit" to the child. See Board of Education of Hendrick Hudson School District v. Rowley, 458 U.S. 176 (U.S. 1982); Doe v. Tullahoma City Schools, 9 F.3d 455, 459-460 (6th Cir. 1993).

The United States Supreme Court long ago developed the two prong test for determining the appropriateness of an IEP. See Rowley, supra, p. 182. The Court has stated that the IEP must be substantively appropriate by providing goals and objectives that are "reasonably calculated" to provide educational benefit to the child. Id at 184. The second prong states that the procedural safeguards of the IDEA must be provided to the parents, including the right to participate in the development of the IEP and to receive notification and an explanation of their rights. Id at 186.

There has long been debate over what educational benefits must be provided. The Supreme Court has given us guidance and stated that educational benefits must be "meaningful." There is no mandate under federal or state law that the program must provide the "maximum" benefit or the best available program to the child. See Rowley at 200-202. The Court has noted that instruction must be provided which would allow the child to benefit educationally from the

instruction and to enable the child to achieve passing marks and advance from grade to grade. See Rowley, supra at 203-204; J.S.K. v. Hendry County School Board, 9401 F.2d 1563 (11th Cir. 1991).

One of the leading cases out of the Sixth Circuit describes the FAPE standard. The United States Court of Appeals for the Sixth Circuit has stated that a school system must provide the educational equivalent of a "serviceable Chevrolet" to every handicapped student .... The School System is not required to provide a Cadillac to each student ... See Doe v. Tullahoma City Schools, 9 F.3d 455, 459-460 (6th Cir. 1993). The Sixth Circuit Court has recognized that the Act provides no more than a basic floor of opportunity for each child, while at the same time noting that the benefits must be more than "deminimis." See Doe at 459.

Other Circuits have also considered this issue. A relatively recent case out of the Fifth Circuit Court of Appeals indicated that the test for determining "appropriateness" is to be examined in light of four (4) factors. These are:

1. An individual educational program based on an assessment of the student's abilities and performance;

2. Delivery of the program in the least restrictive environment;

3. Educational services that are delivered in a "coordinated and collaborative manner"; and

4. Demonstrated positive academic and non-academic benefits.

See Cyprus Fairbanks Indiana School District v. Michael F., 118 F.3d 245 (5th Cir. 1997).

From the testimony presented, it is evident that a plethora of alternative placements and behavioral interventions have been developed and implemented for the child in question. Unfortunately, there has been relatively little to no success in the regular high school

environment for the child. Some of the experts that testified in this matter seemed to indicate that the child has the capabilities of being successful, but the child must learn to control his behavior. See T.P. Vol. III, pp. 396-398, Testimony of Dr. Steve McCallum; T.P. Vol. III, pp. 357-358, Testimony of Dr. Vance Sherwood.

Numerous witnesses testified at this hearing. Nancy Diehle, executive director of Support and Training for Exceptional Parents under IDEA, deals with Parent Training Information (PTI) which helps the parents understand the child's disability, the IEP process, etc. She was a participant in some of the IEP meetings for the child, particularly the August 17, 1998 meeting. See T.P. Vol I, pp. 12,15,17. She indicated that in her opinion deference should be given to the experts who have tested the child. In her opinion, things are not working and the child is not progressing educationally and academically. See T.P. Vol I, pp. 31, 38-39. Ms. Diehle expressed concerns that there must be a rebuilding back to a level of trust between the parents and the System. She indicated that it is essential those parties work together and work things out to assist this child. See T.P. Vol I, p. 38.

Dr. Harvey Kaufman, a psychologist, was selected by the parents to provide services for this child. He indicated that the child is multi-handicapped which includes emotional, learning disabled, bi-polar, expressive in language, and ADHD combined type. See T.P. Vol I, p. 54. In his opinion, Clinton High School would not be an appropriate placement given the alleged rape of this child's older sister. See T.P. Vol. I, pp. 59-61, 66, Testimony of Dr. Harvey Kaufman.

Dr. Kaufman has attended various M-team meetings. He testified that the behavioral contract for the child was a working copy that he, the school system and others on the M-team developed and began to work on in April 1998. He indicated that they had implemented the

contract by June, but were trying to "fine tune" the same at the June meeting. See T.P. Vol I, p. 64. Dr. Kaufman noted that the child is very immature and the important thing is to determine what is appropriate for the child. Kaufman testified that given all that has happened, he himself questions whether Anderson County is appropriate at all or whether it could be given all the animosity and bad feelings between the school personnel and parents. See T.P. Vol I, p. 65. Dr. Kaufman acknowledged that The Learn Center, in his opinion, would be a negative for the child, but he has not seen it. He indicated he could not discount the parents' attitude about it and the parents most definitely do not want the child there. T.P. Vol. I, p. 67.

Dr. Kaufman acknowledged that he agreed with the System's diagnosis of SED, but the mother did not. Dr. Kaufman also testified that he totally disagrees with Dr. Sherwood's conclusions in his report. See T.P. Vol I, p. 71. However, Kaufman acknowledged he has not personally spoken with Dr. Sherwood. T.P. Vol. I, pp. 75, 76.

Dr. Kaufman acknowledged that the child should not be moved without a transition plan in place that takes into account the child's problem of adjusting to new situations. T.P. Vol. I, p. 78. Dr. Kaufman noted that one of the reasons for the child's removal from Anderson County High School was his behavior. Again, the child is under the old classification "SED" and has a disability. T.P. Vol. I, pp. 81, 86. He also noted the child should be provided with transition services sooner rather than later. T.P. Vol. I, p. 90. Kaufman acknowledged he has attended at least six (6) M-team meetings on behalf of the child. He also acknowledged that he has been paid regularly by the System for services he provided this child. T.P. Vol. I, pp. 92-93.

On cross-examination, Dr. Kaufman acknowledged that he agrees with Dr. McCallum's reports and part of Dr. Sherwood's reports. T.P. Vol. I, pp. 95-96. He also acknowledged that

the child would need an outside monitor or aide if the child attended school. T.P. Vol. I, pp. 100-101. Kaufman again stressed that there should be some type of transition plan for the child before the child is returned to a regular high school setting. T.P. Vol. I, p. 102. This transition plan could be within or outside the school as long as it is individualized. T.P. Vol. I, pp. 103, 104.

The mother [redacted] testified that she and/or her husband had been in attendance at various M-team meetings. The mother's biggest objection to Clinton High School and its appropriateness is ridicule this child may face because of their daughter's alleged rape at a party at a friend's home. T.P. Vol. I, p. 126. She also acknowledged that she objects to The Learn Center because the child was apparently placed in a three (3) side carrel at this school when he was in the seventh grade for disciplinary purposes. The mother kept referring to this as a "box" although photographs of the same revealed that it was a study carrel. See Exhibit 6, videotape and Exhibit 7, photograph. The mother also indicated she has objections to The Learn Center because all of the programs that are offered are not applicable to her child. She indicated she understands that the child would be placed in one room all day long with rows of desks and the teacher's desk at the front of the room. She indicated that she understood that only one (1) other student might be with him. He would, however, be allowed to eat lunch with the other children. She just did not think that was very appropriate. T.P. Vol. I, pp. 139-140.

Mrs. [redacted] acknowledged she filed for due process on August 24, 1998. Apparently, the System had filed on the same or previous day. T.P. Vol. I, pp. 147-148.

It is the mother's hope that her child can return to a regular classroom with some type of aide to give him some sort of success and function in society. T.P. Vol. I, p. 150. She indicated

that Anderson County High School was never offered at any of the meetings, except for the June 2, 1998 meeting and again in Ms. McRae's office. T.P. Vol. I, p. 150.

The mother testified that Dr. McCracken, the principal of Anderson County High School, was present at both of the M-team meetings and did not mention any of the child's infractions, particularly at the June 2, 1998 M-team meeting. Allegedly, McCracken threatened to put both the child and his sister [redacted] out of school and the mother felt threatened. This Hearing Officer also has great concerns about Dr. McCracken's conduct in acquiescing to a placement for this child and then just a few days later writing a letter indicating the child would not be allowed to be placed in that setting.

The mother would like to have an out-of-district placement or a private placement for her son. She believes that there has to be an outside source to make sure that he is treated fairly by the school personnel. T.P. Vol. II, pp. 159-160.

Without a doubt, there have been numerous behavioral problems with the child and the child has declining grades. See Exhibit 1, JC-000256. A functional behavioral assessment has been recommended by the school, but the mother contends Dr. Coulter did not complete the behavioral assessment on her child. T.P. Vol. II, pp. 167, 192-194. She acknowledged that various things had been done to help her child, including a shortened school day, adjustment of the medications, etc. She also acknowledged that during her child's freshman year, there were eight (8) M-team meetings. T.P. Vol. II, pp. 168-180. She testified that what brought them here was Dr. McCracken's letter of June 6, 1998. T.P. Vol. II, pp. 180-181.

The father of the child, [redacted], also testified. He indicated that he is not involved in the child's education as he would like to be due to his work schedule. He testified

his child has been classified as both gifted and SED and in his opinion, his child is bright and sharp. T.P. Vol. II, pp. 206-207.

However, [redacted] also testified that in his opinion, his child is immature and impulsive. T.P. Vol. II, p. 213. The child is disciplined at home by them giving him short-term consequences. T.P. Vol. II, p. 209. He also acknowledged that his child has had some disciplinary issues. On February 22, 1999, the child had a knife with a three (3) inch blade on it at school. However, Mr[redacted]estified it was a silver paring knife that the child sharpened his pencils with. T.P. Vol. II, pp. 219-220.

Dr. Ronald R. Brown, Ph.D., a clinical psychologist with the Knoxville Psychiatric Group, testified by deposition on behalf of the Child. See Exhibit 9. Dr. Brown testified he had never met the child or his parents before his evaluation. See Exhibit 9, p. 5. He did not speak with any of the child's teachers or review any of the child's educational records. See Exhibit 9, p. 6. He did review Dr. Michael Greer's report, Dr. Vance Sherwood's report and Dr. Steve McCallum's report. See Exhibit 9, pp. 6-7. Brown administered various tests which included the MMPI-adolescent version, the Beck Depression Inventory, the WISC-II and the Woodcock Johnson. See Exhibit 9, p. 9. Dr. Brown concluded this child has ADHD and behavioral problems. See Exhibit 9, pp. 16, 17, 21.

Dr. Brown testified he had no independent knowledge of the services the child was receiving other than the reports he reviewed which were outside the school district. See Exhibit 9, p. 25. He was not aware Dr. Harvey Kaufman was being paid by the System to attend M-team meetings and provide weekly counseling. See Exhibit 9, p. 28. He was not aware Kaufman had previously made almost identical recommendations (which had been tried by the System) to his

recommendations. See Exhibit 9, p. 25. Exhibit 1 to Dr. Brown's testimony summarizes his report and findings. Many of his recommendations have been tried previously by the System to no avail.

Dr. Brown also testified that he is not familiar with the IDEA or state eligibility criteria and is only vaguely familiar with the requirements of Section 504. See Exhibit 9, p. 41.

Dr. Robert McCracken is currently principal of Anderson County High School. Before that, he was the principal of Clinton High School. He also previously served as the Special Education Director for Roane County. T.P. Vol. II, pp. 224-225.

McCracken testified that he attended the June 6, 1998 meeting. He noted that at Exhibit I, p. 351, those modifications for the child could be provided at Clinton High School. T.P. Vol. II, p. 227. He also testified that the disciplinary record kept on the child showed fifteen (15) violations during the child's freshman year alone. T.P. Vol. II, p. 228, Exhibit I, p. 404.

McCracken acknowledged that the child's parents wanted the child to attend Anderson County High School and he had agreed. He indicated that a standard form was sent to the parents. T.P. Vol. II, pp. 228-230, Exhibit I, p. 391. This form sets forth the criteria which applies to all students, both special ed and regular education. T.P. Vol. II, p. 231.

McCracken claims he discussed the decision to transfer the child back to Clinton with the mother in his office before the June 2, 1998 M-team meeting. Apparently, transfer was not discussed at the June 2, 1998 meeting. T.P. Vol. II, pp. 232-234. He indicated that he did not do this for any malicious purpose and that other students were transferred as well as this child. T.P. Vol. II, p. 235.

McCracken also testified that if this had been any other student, the student would have been expelled but for this student's disabilities. T.P. Vol. II, pp. 237-238. He also stated that if in fact the child is ordered back to the school, there will be no repercussions. T.P. Vol. II, p. 238. He testified he likes the child and the faculty is a good and caring faculty. T.P. Vol. II, p. 239.

In his opinion, McCracken does not think the alleged rape situation involving this child's sister would affect the child's attendance at Clinton High School. T.P. Vol. II, p. 241.

Disturbing to this Court was this witness' statement that McCracken attended the June 2, 1998 M-team meeting and in April 1998. McCracken acknowledged he did not discuss the transfer at the hearing because of the discipline problems at that time. T.P. Vol. II, pp. 232-233. In his mind, McCracken stated that placement for a child is considered "administrative." T.P. Vol. II, pp. 236, 249, 256. He also discussed the school board policy which requires expulsion of students who have four (4) tobacco violations. T.P. Vol. II, pp. 249-250. McCracken noted that expulsion could be reviewed by the school board, but that transfers are at the discretion of the principal. T.P. Vol. II, p. 251. McCracken acknowledged that the child was never recommended for expulsion due to the fifteen (15) offenses and he was never suspended out of school. Most of the time the child was placed in in-school suspension (ISS). T.P. Vol. II, pp. 256-258.

While Dr. McCracken made a credible witness, it cannot escape the comment of this Hearing Officer that it was **extremely poor** judgment on Dr. McCracken's part to sit and participate in an M-team meeting and then send a letter of transfer to the student and his parents a few days later. Dr. McCracken, in good faith, should have spoken up at the M-team meeting since he obviously knew that this transfer was forthcoming. This was incredibly poor judgment on his part.

Ann McRae, the special education supervisor at Anderson County High School, testified that she was one of the establishers of The Learn Center. She testified that The Learn Center is not the same thing as the Center for Achievement. T.P. Vol. II, pp. 262-264. She noted that one of the benefits of The Learn Center is that that school has a behavioral component, a GED program and a 21st century program. T.P. Vol. II, p. 264. There is also a full-time counselor and psychologist at that location. T.P. Vol. II, pp. 265-266.

Ms. McRae is in agreement that the child should be placed at The Learn Center in the behavior program which is often referred to as the Anchor Program. T.P. Vol. II, p. 265. The child could receive regular high school credits and a clinical psychologist, Mark Barnes, would be present. There is also a counselor on staff whose name is Ms. Tiffany Bales. T.P. Vol. II, p. 266.

In an attempt to resolve some of the issues regarding the child, McRae made contacts with other counties which included Roane County, Knox County, Campbell County, Webb School and Oak Ridge City Schools. Only one (1) county was willing to accept the child as a student. T.P. Vol. II, p. 266. This county was Campbell County which was rejected by the parents. T.P. Vol. II, p. 267.

Ms. McRae testified there are a variety of reasons as to why a child may go to The Learn Center. She indicated that, for example, some of the children are overweight and do not want to attend regular high school because they are teased. T.P. Vol. II, p. 278. She indicated that many of the students get to attend regular school functions, but some do not. It all depends on <u>why</u> the students were referred to The Learn Center in the first place. T.P. Vol. II, pp. 278-279. She again stressed that initially this child would be placed in the Anchor Program at The Learn

Center for the behavioral problems. If the student could pass all the requirements, then some adjustments would be made. T.P. Vol. II, p. 280.

Gary Lynn Houck is the lead teacher coordinator at The Learn Center which was formerly the Center of Achievement. He knew the child at the time the child attended the Center for Achievement. T.P. Vol. II, p. 291. He clarified the situation about the child being placed in an alleged "box." He stated that the child was actually placed in a study carrel against another study carrel. The top was open. It was not locked together, soldered together, etc. He indicated that the child was given a break at the same time all the other students were. The child was placed in the carrel to get his attention directed. The child was actually placed in ISS for hitting another child and calling the child names. Houck testified that there were eight (8) violations for the child from November 1996 to May 1997. Most of the other violations were in March, April, and May. T.P. Vol. II, pp. 294-295. Mr. Houck indicated that the child had told him that being in the study carrel actually helped the child from being distracted and allowed him to get his work done. T.P. Vol. II, p. 299. Houck was not the individual who assigned the child to the study carrel and does not actually know who placed him there. However, the child was free to come and go and the child was to let him know if he needed anything or wanted a break. T.P. Vol. II, p. 304.

Pat Yocum, a behavioral specialist for Anderson County, testified that she has been practicing for twenty-seven (27) years total in special ed. T.P. Vol. III, p. 313. She knows the child and met him when he went to the reduced day schooling at the suggestion of his physician. She worked with him and gave him individualized tutoring. T.P. Vol. III, p. 313.

She testified she had almost daily contact with the mother. She indicated there were some difficulties and she encouraged the mother to call her at home occasionally. Ms. Yocum

kept records on the status of the child. She also made certain that lesson plans were relayed to the parent along with her personal notes. T.P. Vol. III, pp. 315-316.

Yocum testified that she and the parents were getting along well until November 21. Apparently, an assignment was not in the child's folder or book bag. She told the mother about it and the mother stated that the child had placed it in there when he left home. This apparently occurred on a Friday. On Monday, Ms. Yocum ascertained that the mother had come in after she had left the school and gone through Ms. Yocum's personal filing cabinet and personal papers. The mother claimed the child had left his books and had actually done the assignment. T.P. Vol. III, pp. 317-320. Yocum advised the parent that it upset her that the parent was intruding in her personal affairs and the relationship with the mother deteriorated after this. T.P. Vol. III, p. 320.

Ms. Yocum maintained the child's disciplinary record, which is located in Exhibit I. p. 404. He had no disciplinary infractions per the report while he was getting one-on-one instruction. He did have tobacco violations thereafter. T.P. Vol. III. p. 322. In her opinion, she thinks she has a very good relationship with the child although he does get upset with her at times. Overall, she stated that when the child applies himself, he does very well. T.P. Vol. III, p. 325.

Dr. Vance Sherwood, a clinical psychologist, testified that he is a generalist, but has actually been regarded as an adolescent psychologist. T.P. Vol. III, p. 343. Fifty percent (50%) of his practice is adolescents and their problems and he is considered an expert in adolescent psychology. T.P. Vol. III, p. 344.

He knows the child in question as he was contacted by the System's attorney to perform an independent evaluation. He had never worked with the System's attorney before and

indicated that he has testified in court for families. A copy of Dr. Sherwood's evaluation is contained in Exhibit I, p. 480. He conducted the evaluation in one day. He broke it down into spending approximately one (1) hour with the child's teachers, one and one-half (1½) hours with the mother and two (2) hours with the child. T.P. Vol. III, p. 345.

The purpose of his evaluation was to: 1) describe the child psychologically, 2) to determine whether he meets SED criteria, 3) to determine whether he has ADHD and which type, and 4) what is best for him from a psychological standpoint. T.P. Vol. III, pp. 346-347.

He indicated he had reviewed the child's IEP's, Dr. Kaufman's report, and Dr. Robertson's report. He also interviewed Pat Yocum and Ginny Micelli and interviewed the mother. T.P. Vol. III, p. 347.

In his opinion, the child is unusually immature for his age and much too dependent and entangled with his family. T.P. Vol. III, p. 348. The child functions more as a pre-adolescent than an adolescent his age. T.P. Vol. III, pp. 348-349.

Dr. Sherwood testified he would like to see some adaptive capacities in the child. The child apparently bores quickly and gives up too quickly when something is too hard. T.P. Vol. III, p. 350. The child also gets angry very quickly when confronted with obstacles and does not handle conflict well. T.P. Vol. III, p. 350. In his opinion, the child lacks ambition and does not feel the need to overcome things. The child is very dependent on external items and control. T.P. Vol. III, p. 351.

He agrees with Dr. Kaufman's assessment that the child is "moody." T.P. Vol. III, p. 352. He also feels that the ADHD diagnosis is appropriate. His primary concern is how to get the child to grow up. T.P. Vol. III, p. 353.

In his opinion, the last IEP that was drafted for the child was good, but it actually did too much for the child and did not ask the child to do certain things on his own. T.P. Vol. III, p. 354.

Sherwood visited the Learn Center and gave his assessment of the same. He also interviewed Dr. Barnes. Overall, he stated it appears to be a good program. T.P. Vol. III, pp. 354-356. When he went there, he first had the impression it was a school for criminals or drug users, etc., but he indicated this is not the case. It is however, a highly structured setting and has a high pupil-teacher ratio. T.P. Vol. III, p. 355.

He indicated he would start the child there if it were his call until the child could prove he could "roll with the punches" and overcome some of his immature behavior. T.P. Vol. III, p. 356. Sherwood testified the child could not be successful in a regular high school setting at this time. If the child were to even attempt it, it would have to be a highly structured setting. T.P. Vol. III, p. 357.

Dr. Sherwood thinks that Dr. Kaufman may have lost his objectivity with the child. T.P. Vol. III, p. 361. He also indicated he disagrees with Kaufman and does not feel there is any point in having an outside monitoring person. T.P. Vol. III, pp. 361-363. He noted that the recent knife incident involving the child bringing a knife to school is typical of an impulsive person and a person who has immature and childish qualities. T.P. Vol. III, p. 362.

Dr. Sherwood noted that the child lacks internal structure and is immature. The child, in his opinion, definitely needs external structure at this time to thrive. T.P. Vol. III, p. 379. He also thinks the child is "overly dependent" on the external world to keep him organized. T.P. Vol. III, p. 380.

Dr. Ralph McCallum, a licensed psychologist in the state of Tennessee, testified. He has worked as a school psychologist for approximately four (4) years and was tendered as an expert in school psychology at this hearing. T.P. Vol. III, pp. 390-391.

McCallum performed an evaluation on the child at the System's attorney's request. This occurred in approximately November 1998. T.P. Vol. III, p. 391. McCallum has never testified before at a Due Process Hearing or in Court. His report is contained in the record as Exhibit I, p. 511.

McCallum tried to meet with the child's mother, but it never worked out. He did talk with her via telephone. He met with the child for approximately four and a half (4½) hours. He also interviewed the child's teachers, Pat Yocum and Ginny Micelli, for approximately one and a half (1½) hours. T.P. Vol. III, pp. 393-394. He testified he reviewed Dr. Kaufman's, Dr. Ron Brown's and Dr. Robertson's reports. He also reviewed the IEPs, Mrs. [redacted] deposition, and Dr. Kaufman's deposition. T.P. Vol. III, pp. 394-395.

He testified he administered two (2) IQ tests to the child. Pursuant to the law, there has to be a discrepancy between the cognitive ability and achievement to be eligible for special ed services. It has to be fifteen (15) points or greater in Tennessee. T.P. Vol. III, p. 394. He also administered the Stanford Binet test. He noted the child did not have significant discrepancies in language. He also noted it is possible to rule out learning disabilities in this category. T.P. Vol. III, p. 394.

In McCallum's professional opinion, the child is going to have significant difficulty without supports and modifications. T.P. Vol. III, p. 396. In his opinion, the most recent IEP that has been proposed is appropriate for the child. T.P. Vol. III, p. 396.

McCallum has also visited The Learn Center personally. He is like most of the experts and thinks that the child could benefit from a smaller class. T.P. Vol. III, p. 396. If the child could succeed in an environment like The Learn Center, then it would be reasonable to conclude that the child could succeed in a regular environment. T.P. Vol. III, p. 397. He noted that without a doubt, The Learn Center is designed to be temporary with the goal of getting the child back to the regular classroom with modifications. T.P. Vol. III, p. 397. He, like Dr. Sherwood, sees no reason for an outside person to be hired to come in and monitor implementation of the child's IEP. T.P. Vol. III, p. 398. He indicated that there is a very good support system at The Learn Center and in his opinion, Tiffany Bales, the counselor, has a very good background in mental health counseling. T.P. Vol. III, p. 398.

The most important thing McCallum testified to was that the best predictor for the future is past behavior. The last time the child was in a regular class, the child had extreme difficulty. T.P. Vol. III. p. 398.

In his professional opinion, McCallum feels the child must develop strategies to deal with his impulses and control. Also, there might be some shortening of assignments. T.P. Vol. III, pp. 404-405.

Dr. Michael Greer testified as an expert for the System. He is board certified in adult psychology and focuses on child and adolescent psychology. T.P. Vol. III. p. 410. He is a consultant with a variety of school systems and helps design programs for the students. He does in-services and workshops for school systems and works with children and adults with ADD. He indicated parents use him independent of any school proceeding as well. He is a consultant with

the Anderson County School System, but does not have a specific contract with them. He had never testified in a Due Process Proceeding before. T.P. Vol. III, pp. 411-412.

Dr. Greer saw [redacted] on October 7, 1998 for an evaluation at the school attorney's request. He interviewed the child, the parent, Ms. Pat Yocum, Ms. Ginny Micelli, and he talked with Dr. Kaufman. T.P. Vol. III, pp. 413-414. His report is contained in Exhibit 1, JC-000468-JC-0000476. He reviewed the 1992, 1994, 1996 and 1997 psychoeducational testing of the child and reviewed Dr. Kaufman's and Dr. Robertson's reports. He did not review Dr. McCallum's report initially, but he did review it later and also the report of Dr. Ron Brown. T.P. Vol. III, p. 415.

Dr. Greer also had the evaluations which validated the history he received from the mother and the child. He noted that the child was quite insightful about all that had happened to him to date. In addition, Dr. Greer had access to all of the medical information and the social history of the child. T.P. Vol. III, pp. 416-419.

Dr. Greer's diagnostic evaluation was that the child has bi-polar disorder and has had episodes of depression in the past with mania, etc. He also found that the child is ADHD, but is not as hyper as he was as a younger child. T.P. Vol. III, p. 416. Dr. Greer found that the child has less aggression than in the past and in his opinion, has oppositional defiant disorder as well. T.P. Vol. III, p. 417.

Dr. Greer testified that the child is bi-polar and is not SED based on the October evaluation. He noted that everyone who has evaluated the child seems to have a similar understanding of him. T.P. Vol. III, p. 419. Dr. Greer spends a lot of time evaluating what is an

appropriate placement for a child and is familiar with Section 504, IDEA and the Tennessee Eligibility Criteria. T.P. Vol. III, p. 419.

It is important to note that the learning disability, the inattentiveness syndrome and the lack of motivation are all contributing factors to the child's failure to participate in a regular school. T.P. Vol. III, pp. 421-422. Dr. Greer feels that a small, structured, educational setting with a smaller student to teacher ratio is needed to address the child's attention symptoms as they appear. In addition, a comprehensive behavior plan is essential for the child to succeed. If the child can succeed in this setting, the child can probably move into a regular ed program. T.P. Vol. III, pp. 423-424.

Dr. Greer states that the child needs an opportunity to be successful and to do well in school. This would allow the child to move to the less structured setting. T.P. Vol. III, p. 424. In evaluating what would be appropriate, Dr. Greer visited The Learn Center last academic year while evaluating five (5) different students. Based on his evaluation of this child, Dr. Greer feels that The Learn Center could be an appropriate setting for the child at this time. However, he noted the child still needs a behavior support plan and needs to learn to understand his feelings and manage those. T.P. Vol. III, p. 425.

Dr. Greer did not complete his report until he had Dr. Sherwood's report, although he did do his evaluation beforehand. Many modifications could be made. Some of the modifications Dr. Greer would recommend include preferential seating and assistance with organization which could consist of an assignment logbook that is shared with home and school. In addition, modification of the volume of the child's homework could be done. T.P. Vol. III, pp. 430-431.

Finally, a former teacher of the child, Ginny Micelli, who teaches special ed at the Anderson County High School, testified. She knows the child and has participated in the interim IEP development for him. She had previously tried to help the child get organized first thing in the morning and then the last thing in the afternoon. T.P. Vol. III, pp. 433-434. However, the child did not always show up. Ms. Micelli has also participated in all M-team meetings from early fall until June. She knows Dr. Kaufman and used to telephone him and keep in contact with him regarding the child. She felt like she and the child had a good working relationship. She tried to stay abreast of all the events going on with the child and follow Dr. Kaufman's recommendations to her about how the handle the child's behavior. T.P. Vol. III, pp. 435-436.

Ms. Micelli noted that at times the child would seem to avoid work. He would often sleep in class, have headaches, etc. However, many of these problems could be attributed to his medicine which was later changed. Outside the classroom, there were other bad behaviors such as fighting and tobacco violations. T.P. Vol. III, p. 437.

Ms. Micelli kept anecdotal notes on the child and his work habits and behavior. These are codified at Exhibit 1. JC-000289-JC-000293. Ms. Micelli felt that as the year progressed, she and other personnel were putting up with more things from the child than they did from other students in an effort to try to help the child. She also wanted to change the mother's perception of the school system and the mother's perceived notion that the school did not like the child and did not want to do anything with him. T.P. Vol. III, p. 439.

She cares very much, not only about this child, but all children who are in special ed and has a long history in the special ed area. In her opinion, the child could be mainstreamed back

into the regular ed classroom if his behavior improves and the child can get focused. T.P. Vol. III, p. 443.

From the all of the testimony provided, this clearly shows that the System has attempted to meet or exceed what they would normally be required to do for this child. An array of placements and interventions have been implemented, some with success and some without success, in the regular high school environment. Also, different placements and strategies were implemented to respond to the child's inability or unwillingness to control his behavior.

As noted above, the child's own doctor, Dr. Harvey Kaufman, agrees with the System's three (3) expert witnesses that the child cannot be successful in the regular classroom setting at this time. T.P. Vol. I, p. 76.

From the record, it appears that the school system did not violate any of the procedural requirements of either state law or the IDEA. The parents actively participated in all of the M-team meetings, which is to be commended on the parents' behalf. Apparently, the parents have always received notification of their rights, including the right to request due process and to have the child identified and evaluated per 20 U.S.C. §1415(e). The mother of the child even testified that they had participated and been very active with the child's progress. T.P. Vol. II, pp. 162-177.

The law requires that procedural violations must be analyzed in terms of whether actual harm has been done. Where parents are given an opportunity to participate and in fact do participate and obviously know their rights, technical or minor violations have no impact. Any minor procedural violation is not actionable and does not make the educational program inappropriate. See Livingston v. DeSoto County School District, 782 F.Supp. 1173 (N.D. Miss.

1992); Doe v. Defendant, 1898 F.2d 1186 (6th Cir. 1990). As long as the parents have been effectively afforded the opportunity to participate in the IEP process, there is no violation. The child has continued to receive special education and related services in accordance with his current IEP even though these have been rendered in a one-on-one setting at the school headquarters. This is clearly not what the law intended and it most definitely violates the mainstreaming requirement.

Pursuant to the IDEA, a "change in placement" is defined as a fundamental change or an elimination of a basic element of a child's educational program. See Lunceford v. District of Columbia Board of Education, 745 F.2d 1577, 1582 (D.C. Cir. 1984). An examination of the federal law reveals that school systems are not required to enroll students with disabilities in the school of their choosing. See Flour Bluff Independent School District v. Catherine M., 91 F.3d 689 (5th Cir. 1996); Hudson v. Bloomfield Hills Public Schools, 910 F.Supp. 1291 (E.D. Michigan 1995). The IDEA Amendments of 1997 does require the IEPs to contain the "location" of special education and related services to be provided to students with disabilities. See IDEA 20 U.S.C. 1414(d)(1)(a)(vi). However, this was not effective until July 1, 1998 which is after the date on which this child's IEP was drafted. Even assuming that the current law had been in effect, it is still open to interpretation as to whether or not the specific school building must be stated. However, the IDEA Amendments are not retroactive and are not controlling in this matter. See Peter v. Wedl, 155 F.3d 1992 (8th Cir. 1998); Tucker v. Calloway Board of Education, 136 F.3d 495 (6th Cir. 1998). The parents cannot demand, and the school system does not have to require, that this child be placed at the Anderson County High School. The

change in location does not constitute a "change in placement" so long as the IEP services are not materially altered.

The United States Department of Education's Office for Special Education Programs (OSEP) indicates that a change in physical location of a program does not constitute a "change in placement" to the IDEA. Thus, no formal notice is required and no obligation to evaluate the student prior to a transfer exists. See 21 IDELR 992 (OSEP 1994).

While obviously handled incorrectly and poorly, Dr. McCracken's revocation of permission to enroll the child at Anderson County High School is an administrative matter. The parents were at a later date (approximately August 24, 1998) offered the opportunity to place the child at Anderson County High School instead of Clinton High School and the parents rejected the same.

That brings this Court to the question of what is appropriate for the child. The primary goal of the IDEA is to make sure that school districts place students with disabilities in locales where the child has the greatest opportunity to be educated with and have opportunity for socialization with non-disabled peers. See Roncker v. Walter, 700 F.2d 1058 (6th Cir. 1983). In that case, the Sixth Circuit determined a test for establishing whether or not a placement in a residential facility meets the mainstreaming requirements of the IDEA. The requirements include that a school system must determine that whether the services that make the residential placement superior could be feasibly provided in a non-segregated setting. This must be accomplished in the least restrictive environment in which the services can be provided. See Roncker, supra at 204; Karih v. Franklin Special School District, 125 F.3d 855 (6th Cir. 1997).

The parents of this child and many of the experts focused on the alleged rape of the child's sister. This occurred more than four (4) years ago. The family lives in the city of Clinton and apparently all the family has social contact with persons who may have known about the alleged rape. The distance between Anderson County High School and Clinton High School is only approximately eight (8) miles and both schools are within the city limits. This Court finds this is not a factor at this time.

CONCLUSION

Based on all the expert testimony and the testimony of the child's teachers, the Court finds this child needs placement in a very small classroom in a highly structured environment initially. Support services shall be implemented to make the child successful. This shall include a functional behavioral assessment and a behavioral management plan. The child is currently not in the least restrictive environment and needs to be. Moreover, the child needs to be with his peers as part of the mainstreaming. Dr. Kaufman's testimony leads one to believe that a smaller setting, such as The Learn Center, would be appropriate for this child. However, he has not visited The Learn Center. See T.P. Vol. I, p. 99. The other experts that visited The Learn Center recommended it as a possible placement.

Accordingly, this Court further finds that an M-team meeting shall be held within fifteen (15) days from the date of this Opinion and an appropriate program devised for the child at The Learn Center where the child can receive a highly structured environment with modifications. It is further ORDERED that this program shall be reviewed at three (3) month intervals and an assessment made as to whether the child is ready to be returned to the regular classroom with modifications as determined by the experts. Although this Court has no ability to enforce

cooperation between the parties, the Court encourages the parties to put aside all prior feelings and work toward the educational well-being of this child. Too much time has passed. There must be more autonomy of the child separated from his family so he can function in a real-life setting. This Court strongly admonishes Dr. McCracken in the future to be wary of participating in M-team meetings and making and agreeing with placements which later are retracted. This conduct is inexcusable.

The behavior management plan shall be developed at the next M-team meeting within the fifteen (15) day period and implemented. It is further ORDERED that the M-team shall determine whether Dr. Harvey Kaufman shall continue to work with this child. This Court also finds that having the benefit of Dr. Michael Greer as a consultant and/or Dr. Steve McCallum would be greatly beneficial to this child's program. Effective strategies must be developed for this child to control his behavior and allow the child to begin the maturation process. The Court finds that the ultimate goal shall be to get this child back into the regular high school environment as quickly as possible. It is further ORDERED that a transition plan shall be developed for the child in order to make the transition into the community and/or a possible college environment.

The school system is the prevailing party for the purpose of this Hearing. Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or may seek review in the United States District Court for the district where the school system is located. Such appeal and review must be sought within sixty (60) days of the entry of the Final Order in non-reimbursement cases or three (3) years in cases involving education costs and

expenses. In appropriate cases, the reviewing Court may order that this Final Order be stayed pending further hearing in this cause.

If the determination of the hearing officer is not fully complied with and implemented, the aggrieved party may enforce it by proceeding in the Chancery or Circuit Court under the provisions of Tennessee Code Annotated §49-10-601, et seq.

Within sixty (60) days from the date of this Order (or thirty (30) days if the Board of Education chooses not to appeal), the local education agency shall render in writing to the District Team Leader and the Office of Compliance, Division of Special Education, assurance of compliance with the provisions of this Order.

ENTERED this the 18th day of May, 1999.

KIMBERLY K. WHALEY
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Memorandum Opinion and Order has been mailed, postage pre-paid by the U.S. Mail to:

Ms. Melinda Maloney Baird
300 Montvue Road
Suite F
Knoxville, TN 37919-5510

[redacted]

Ms. Sonya Smith
Tennessee Department of Education
Division of Special Education
Gateway Plaza, Eighth Floor
710 James Robertson Parkway
Nashville, TN 37243-0380

on this the 18th day of May, 1999.

KIMBERLY K. WHALEY
ADMINISTRATIVE LAW JUDGE